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August 16, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
c/o Vistronix, Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

WorldCom, Cox, and AT&T ads. Verizon
CC Docket Nos. 00-218, 00-249, and 00-251

Dear Ms. Dortch:

Enclosed please find four copies each of Verizon VA's (i) Petition for Clarification and Reconsideration of July 17, 2002 Memorandum Opinion and Order, including one attachment, and (ii) Motion Seeking Leave To Exceed Page Limit For Petition For Clarification And Reconsideration. Please do not hesitate to call me with any questions.

Sincerely,

Kelly L. Faglioni

Kelly L. Faglioni
Counsel for Verizon

KLF/ar
Enclosures
cc: Jeffery Dygert, Assistant Bureau Chief, Common Carrier Bureau (8 copies) (By Hand)

No. of Copies rec'd 0+4
List ABCDE

With enclosures, via email and UPS-Next Day:
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Expedited Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration	)	CC Docket No. 00-218
In the Matter of Petition of Cox Virginia Telecom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and for Arbitration	)	CC Docket No. 00-249
In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc.	)	CC Docket No. 00-251

VERIZON'S PETITION FOR CLARIFICATION AND RECONSIDERATION OF JULY 17, 2002 MEMORANDUM OPINION AND ORDER

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Verizon Virginia Inc. ("Verizon"), pursuant to 47 C.F.R. § 1.106, respectfully submits this Petition for Clarification and Reconsideration of the Memorandum Opinion and Order ("*Order*") released by the Wireline Competition Bureau on July 17, 2002.

I. NETWORK ARCHITECTURE ISSUES

The *Order* acknowledges that "Verizon raises serious concerns about the apportionment of costs caused by a competitive LEC's choice of points of interconnection" and notes that "the Commission is currently examining similar concerns on an industry-wide basis in a pending rulemaking proceeding. Should the Commission's rules governing interconnection and reciprocal compensation change during that proceeding, we expect the agreements' change of law provisions to apply." *Order* ¶ 54; *see also id.* at ¶¶ 69 & 91. The Bureau, however, rejected Verizon's request to address those concerns in the context of this proceeding, even though the Commission previously found that Verizon's proposals do not violate the Telecommunications Act of 1996 (the "Act") or the Commission's rules.[1] Instead, the Bureau holds that "we will decide the issues presented based on the Commission's existing rules, and the Petitioners' interconnection proposals more closely conform to those rules than do Verizon's proposals."[2] The Bureau should, however, clarify that the interconnection agreements must indeed conform to the Commission's existing rules.[3]

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[1] *Order* ¶ 53 and n.123, citing *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania, Memorandum Opinion and Order*, 16 FCC Rcd 17419, ¶ 100 (2001) ("Verizon Pennsylvania 271 Order").

[2] *Order* ¶ 54.

[3] The *Order* acknowledges that the Bureau's decisions "must meet the requirements of section 251 and accompanying Commission regulations." *Id.* at ¶ 29. To meet these requirements, the Bureau held that it was not constrained to "either adopt one party's proposal or reject both," but would modify a proposal "to bring the agreement into conformity with the Act and Commission rules." *Id.* at ¶ 31.

To address its concerns about being required to transport traffic without adequate compensation, Verizon proposed that the agreements should differentiate between the terms "POI," referring to the physical point of interconnection, and "IP," referring to the demarcation point for financial responsibility. *Order* ¶ 49. The Bureau rejected that proposal, holding that the point of physical interconnection should be the same as the point where financial responsibility begins and ends. Id. at ¶¶ 51-54 and 66 ("we reject Verizon's proposal ... to establish an IP that is distinct from the POI.") In rejecting Verizon's proposal, however, the *Order* uses language that does not precisely conform to the Commission's existing rules. Verizon seeks clarification of the *Order* to eliminate any potential inconsistency.

The Bureau held that "[u]nder the Commission's rules, competitive LECs may request interconnection at any technically feasible point. [citing 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.305(a)(2).] This includes the right to request a single point of interconnection in a LATA." *Order* ¶ 52. Verizon does not dispute these statements as far as they go, but they do not go far enough. It is not precisely correct to say that a competitive LEC may request interconnection **at any technically feasible point**, or **at a single point in a LATA.** Pursuant to Rule 51.305 (a)(2), the interconnection point must be "[a]t any technically feasible point **within the incumbent LEC's network** ...." 47 C.F.R. § 51.305(a)(2) (emphasis added).[4] By omitting those words –

Accordingly, to the extent that the Bureau adopts the Petitioners' proposals, it should modify the interconnection agreements to conform to the Commission's existing rules.

[4] The Commission was cognizant of this rule even when it required some build out of facilities to create meet point arrangements. "In a meet point arrangement, the 'point' of interconnection for purposes of sections 251(c)(2) and 251(c)(3) **remains on 'the local exchange carrier's network'** (*e.g.*, main distribution frame, trunk-side of the switch), and the limited build-out of facilities from that point may then constitute an accommodation of interconnection." *In re Implementation of the Local Competition Provision in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 at ¶ 553 (1996). ("*Local Competition Order*")

"within the incumbent LEC's network" – the *Order* creates ambiguity. Indeed, that ambiguity may have led the Bureau to approve language that conflicts with the Commission's rule.

The significance of these words is also apparent in other Commission rules. Rule 51.701, for example, applies to "reciprocal compensation for transport and termination of telecommunications traffic between LECs and other telecommunications carriers." 47 C.F.R. § 51.701(a). Subsection (c) defines "transport" as "the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) **from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party** ... ." 47 C.F.R. § 51.701(c) (emphasis added). Thus, the definition of "transport' makes the distinction between the interconnection point, which must be within the incumbent LEC's network pursuant to Rule 51.305(a)(2), and the terminating carrier's end office switch serving the called party.

Some language that the Bureau adopted is consistent with these rules. The language in the WorldCom agreement correctly states that "Verizon shall provide Interconnection for the facilities and equipment of MCIm with Verizon's network for the transmission and routing of Telephone Exchange Service and Exchange Access **at any Technically Feasible point within Verizon's network.**"[5]

Other language the Bureau adopted, however, is unclear and out of context might be read to may conflict with the Commission's rules. For example, the Bureau adopted § 1.3 of AT&T's Schedule 4,[6] which provides:

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[5] WorldCom agreement, § 1.1.1 (emphasis added).

[6] *Order* ¶ 51, n.116.

> VERIZON shall interconnect to the AT&T network (i.e., establish a POI) for the delivery of ESIT [Exchange Service Interconnection Traffic] originating on the VERIZON network at such points mutually agreed to between the Parties or, lacking mutual agreement, **at each respective AT&T Switch serving the terminating AT&T end user.**[7]

As Rule 51.701(c) makes clear, the point of interconnection cannot be at "AT&T's switch serving the terminating AT&T end user." Instead, the rule specifies that AT&T transports traffic from the interconnection point to that switch. Moreover, AT&T's switch, almost by definition, is not "within the incumbent LEC's network," and thus the language also conflicts with Rule 51.305(a)(2). There is no rule and no provision of the Act requiring Verizon to interconnect "within the competitive LEC's network."

Similarly, section 4.2.2 of Cox's agreement, which the Bureau adopted,[8] provides, in part:

> Interconnection Points. Each Party shall establish Interconnection Points ("IPs") at the available locations designated in Schedule 4.1. The mutually agreed-upon IPs **on the Cox network** from which Cox will provide transport and termination of traffic to its Customers shall be designated as the Cox Interconnection Points ("Cox-IPs").[9]

This language conflicts with Rule 51.305(a)(2) because the point of interconnection must be on Verizon's network, not on Cox's network.

Because the Bureau intended to adopt language that conforms to the Commission's rules, it should clarify that any points of interconnection on the AT&T or Cox network must be by mutual agreement, and absent that agreement, the selected point(s) of interconnection must be on Verizon's network.

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[7] AT&T agreement Schedule 4, § 1.3 (emphasis added).

[8] *Order* ¶ 51, n.116.

[9] Section 4.2.2 of the Cox agreement (emphasis added).

The Commission's rules do more than specify that when Verizon sends traffic to a CLEC, the CLEC transports that traffic from the interconnection point to its switch. The rules also specify the charges the CLEC may assess for providing that service: the CLEC is entitled to charge reciprocal compensation for transport, which is defined as "the transmission and any necessary tandem switching" of the traffic. 47 C.F.R. § 51.701(c). Pursuant to Rule 51.711, moreover, those rates must be symmetrical, *i.e.*, they must be "equal to those that the incumbent LEC assesses on the other carrier for the same services." 47 C.F.R. § 51.711(a)(1). A CLEC may charge asymmetrical rates "only if" it proves, based on a cost study, that "a higher rate is justified." 47 C.F.R. § 51.711(b). The Bureau should clarify that its decision is consistent with these rules.[10]

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[10] *See* Some language the Bureau adopted, however, conflicts with the Commission's rules, and the Bureau should clarify that its decision is consistent with these rules. For example, the Bureau adopted § 1.5 of AT&T's Schedule 4, *Order* ¶ 51, n.116, which provides:

> Each Party shall compensate the terminating Party under terms of this Agreement for any transport that is used to carry ESIT between the POI and a distant switch serving the terminating end user. Such transport shall be either Dedicated Transport or Common Transport pursuant to the interconnection method elected by the originating Party, subject to the terms of Part B.

AT&T agreement, Schedule 4, § 1.5. Rule 51.701(c) makes clear, however, that AT&T may not charge Verizon dedicated transport, common transport or any transport other than the transport component of reciprocal compensation, which is defined as "the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act **from the interconnection point between the two carriers to the terminating carrier's end office switch** that directly serves the called party ..." 47 C.F.R. § 51.701(c)(emphasis supplied).

Likewise, § 4.2.3 of the Cox agreement says that "[t]o the extent the originating Party's Point of Interconnection ("POI") is not located at the terminating Party's relevant IP, the originating Party is responsible for transporting its traffic from its POI to the terminating Party's relevant IP" which according to the language adopted by the Bureau for Section 4.2.2 would be located on Cox's network. These two sections could be interpreted together to say that Verizon has to pay Cox for transport from the Point of Interconnection to Cox's switch, which is similarly inconsistent with the Commission's rules (47 C.F.R. § 51.701(c)).

A. ISSUE I-4: END OFFICE TRUNKING.[11]

Verizon establishes direct two-way trunks between two end offices when there is sufficient traffic – *i.e.*, when the traffic exceeds a DS-1 level – because that is most efficient. If the volume of traffic between two end offices is smaller, it is sent to a tandem office with other low volume traffic, where it is switched and routed to the destination end office. This issue concerns whether the competitive LECs should configure their interconnection trunks with Verizon to allow Verizon to apply the same engineering standards to CLEC traffic as it traverses Verizon's network. If the CLECs do not establish direct end office trunks when the traffic exceeds a DS-1 level, the switching capacity of Verizon's tandems will be exhausted unnecessarily, and Verizon will be forced to operate its network inefficiently. These inefficiencies will increase costs that are not recovered in Verizon's rates, because those rates are limited by Commission rules to the costs of an efficient network.[12]

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[11] *See Order* ¶¶ 77-91.

[12] An additional issue is whether the CLEC can dictate when Verizon establishes direct trunks for traffic from Verizon to the CLEC. There is absolutely no basis for a CLEC to dictate how Verizon engineers its network, and the Bureau should clarify that is not permissible. This issue is raised by the language of the Cox agreement that the Bureau adopted in ¶ 89, n.277. Section 5.2.4 of the Cox agreement states: "In the event the one-way Tandem-routed traffic volume between any two Cox and Verizon Central Office Switches at any time exceeds the CCS busy hour equivalent of three DS-1s for any three (3) months in any consecutive six (6) month period or for any consecutive three (3) months, the originating Party will establish new one-way direct trunk groups to the applicable End Office(s) consistent with the grade of service parameters set forth in Section 5.5". This language should not be read to specify the standards that Verizon uses for establishing one-way direct trunks. The language is the AT&T agreement appears to be silent on this issue, but AT&T should likewise not be permitted to dictate engineering standards for Verizon's network.

1. Verizon's Direct End Office Threshold Should Apply to AT&T And Cox Because It is The Same Standard That Verizon Applies To Itself And Is Supported By The Clear Weight Of The Evidence.

Petitioners AT&T and Cox argued that Verizon's proposal "essentially would require them to establish additional points of interconnection." *Order* ¶ 77. That is entirely untrue. As the Bureau recognized, "implementing direct end office trunks does not entail changing the location of a tandem office point of interconnection." *Id.* at ¶ 91. The competitive LEC can still deliver all its traffic to the same point of interconnection. It will simply segregate traffic to a specific end office onto a separate trunk group so that the traffic will not have to be switched at the tandem, but instead can be routed directly to that end office.

The Bureau nonetheless rejected Verizon's proposal. It held that Verizon had not shown by "clear and convincing evidence" that competitive LEC traffic is responsible for tandem exhaustion. *Order* ¶ 89. The Bureau also held that competitive LECs already have the same incentive as Verizon to move their traffic onto end office trunks when it would be more cost effective than routing it through Verizon' tandems. *Order* ¶ 88. Neither of these assertions provides a basis for rejecting Verizon's proposal. The Bureau should therefore reverse its decision, and prevent competitive LECs from imposing unnecessary inefficiencies on the operation of Verizon's network.

In support of its holding that Verizon was required to prove by "clear and convincing evidence" that CLECs are responsible for the exhaust of Verizon's tandems in Virginia, the Bureau cites ¶ 203 of the *Local Competition Order*. *Order* ¶ 89. That paragraph, however, discusses the standard that an ILEC must meet to prove that a CLEC's requested interconnection point is not technically feasible, and that is not at issue here. As noted above, the Bureau

recognized that implementing direct end office trunking does not affect AT&T's or Cox's choice about where either carrier will physically interconnect with Verizon.

When a CLEC connects its trunk groups at its chosen physical point of interconnection, the various trunks in the trunk groups can be pointed to different Verizon switches, such as to each tandem in the LATA or to particular high-volume end offices. For either Verizon's or the CLEC's originating traffic, the traffic riding on the trunk group passes through the POI onto the other party's network. And regardless of the switches to which individual trunk groups might be aimed, the POI stays in the same location. Thus, the "clear and convincing evidence" standard, which governs ***where*** interconnection takes place, does not apply to the question of whether the CLECs should aim some of their trunk groups directly toward high-volume end offices or other tandems in the LATA to avoid overloading the nearest tandem switch.

Instead, the Bureau should have followed the Eight Circuit's admonition that the Act does not require ILECs to provide "superior quality interconnection."[13] Rather, ILECs are only required to provide interconnection that is at least equal in quality to that provided by the ILEC to itself.[14] The uncontradicted evidence established that Verizon's own engineering standard sets a DS-1 threshold for end office trunks for itself to avoid tandem exhaust and call blocking.

Not only is the DS-1 threshold consistent with Verizon's own engineering practice, it is supported by the clear weight of the evidence revealing that the greatest factor contributing to tandem exhaust is growth in the trunks at the tandem.[15] The record establishes that (i) between

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13 *Iowa Utilities Board v. Federal Communications Comm'n,* 219 F.3d 744, 758 (8th Cir. 2000), *rev'd on other grounds, Verizon v. FCC,* 122 S.Ct. 1646, 1678 (2002).

14 *Id.* at 758.

15 *See* Tr. at 1276; Verizon Ex. 4 at 37-39.

December 1999 and August 2001, out of all of the trunks at tandems, the percentage of the trunks belonging to CLECs increased from 9.1% to 16.6%,[16] (ii) in 2000, the number of CLEC trunks at the tandem in Virginia grew at a rate of 100%,[17] (iii) as a result, multiple Verizon tandems have been exhausted or face exhaustion in the near future,[18] and (iv) without these dedicated trunks, the likelihood of call blocking increases and Verizon may be subject to performance standards and penalty payments.[19]

Despite the great weight of the evidence, the Bureau pointed to Cox's evidence that CLEC trunks accounted for one-sixth the trunks at the tandem in 2001[20] to conclude that Verizon did not meet the Bureau's "clear and convincing" standard. But Cox's evidence – which is a snapshot in time – does not disprove that the ***growth*** of CLEC traffic at the tandem is causing tandem exhaust.[21]

The Bureau also incorrectly concluded that the difference between Verizon's tandem and end office switching rates provides the CLECs with adequate incentive to route traffic to the end office directly. First, to the extent a CLEC accepts Verizon's offer to mirror rates pursuant to the *ISP Remand Order*, there is no difference between the tandem rate and end office rate. Second, any difference that might exist only applies in one direction, *i.e.*, for the traffic AT&T or Cox

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16 *See* Cox. Ex. 12.

17 *See* Tr. 1277; Verizon Ex. 4 at 38-39.

18 *See* Tr. 1101-02 (four have already exhausted in Virginia, and three more face exhaustion in the next three to five years).

19 Tr. 1099-1100 (Verizon cannot "deload" traffic off the final dedicated trunk group between the CLEC switch and Verizon tandem to assist Verizon in preventing call blocking; Verizon's performance standards and performance penalty payments are based on this final trunk group).

20 *Order* ¶ 89.

21 *See* Cox. Ex. 12.

originates to Verizon. The difference between Verizon's tandem switching and end office rate cannot act as an incentive when Verizon originates traffic to one of the CLECs, over either a two-way trunk or a one-way trunk from Verizon to the CLEC.[22] As the Bureau is aware, as an ILEC, Verizon originates far more traffic to the CLECs than the CLECs originate to Verizon.[23] Therefore, the difference between Verizon's tandem and end office switching rates provides no significant financial incentive to move traffic to a direct end office trunk.

Because the Bureau applied the wrong standard and overlooked the clear weight of the evidence, the Bureau should reconsider its resolution of Issue I-4 and order adoption of Verizon's proposed contract language to both AT&T and Cox.[24]

2. For The Same Reasons, The Bureau Should Clarify That WorldCom's Agreement To Establish Direct End Office Trunks At The DS-1 Threshold Applies Even If WorldCom Establishes Physical Interconnection At A Single Tandem In The LATA.

The Bureau adopted § 1.3.1 of WorldCom's proposed Attachment IV § 1.3.1, entitled "LATA Wide Terminating Interconnection." Order at ¶ 51, n.116. That section provides that "the Parties will establish Local Interconnection Trunk Groups to a single Verizon Tandem designated by MCIm for the termination of all Local Interconnection Traffic destined for any

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22 In these situations, if a CLEC can determine whether to implement direct end office trunking based solely on its originating traffic, it can essentially force Verizon to route its traffic on the same two-way trunk inefficiently.

23 *See In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, FCC No. 01-131 ¶ 5 (rel. April 27, 2001). *("ISP Remand Order")* (on average, CLECs terminate eighteen times more traffic than they originate).

24 *See* Verizon proposed agreement to AT&T § 4.2.8; Verizon proposed agreement to Cox § 5.2.4. In any event, the Bureau should at least require AT&T to route traffic to the end office directly when traffic reaches 3 DS-1s. This is the standard Cox proposed to Verizon and should at the very least be acceptable to AT&T.

Verizon office in that LATA.[25] At the same time, However, the Bureau also specifically held that "interconnection at a single tandem office location would not contravene WorldCom's commitments in this proceeding to route traffic according to the LERG or to implement direct end office trunking at a DS-1 level of traffic." To avoid any confusion, the Bureau should clarify that § 1.3.1 must be read to mean that, although WorldCom may establish a single point of interconnection at a particular tandem location in the LATA, WorldCom must configure its trunk groups to aim trunks at each Verizon tandem switch in the LATA (and to any end offices at a DS-1 level of traffic), so that the traffic may be routed according to the LERG.[26] Indeed, the record reflects the serious network problems that any other interpretation would create. *See* Tr. 1463-66.

B. ISSUES IV-6, V-1, AND V-8: MEET POINT TRUNKING ARRANGEMENTS AND COMPETITIVE ACCESS SERVICES.

In resolving Issue IV-6, the Bureau held that WorldCom has the "right to purchase unbundled dedicated transport from Verizon to provide IXCs with access to WorldCom's local exchange network"[27] and ordered the parties to adopt WorldCom's contract language. The Bureau should reconsider its conclusion, because its resolution of this issue allows WorldCom to substitute an unbundled network element ("UNE") for an access service, contrary to the Act and contrary to the Commission's own precedent.

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[25] *See* WorldCom Attachment IV § 1.3.1.

[26] The LERG lists no more than two routing points where a carrier can direct traffic destined for any particular NPA-NXX combination in the North American Numbering Plan Area. Those two points are the end office switch where the NPA-NXX resides and the (single) tandem switch that that end office subtends. Local Exchange Routing Guide Traffic directed to any other tandem switch or end office cannot be routed to the NPA-NXX in accordance with the LERG.

[27] *Order* ¶ 177.

Commission precedent requires the Bureau's unbundling analysis to be focused on the "services" the requesting carrier seeks to offer, among other factors.[28] That is, the Bureau must consider the service WorldCom seeks to offer in determining whether WorldCom is entitled to UNE dedicated transport in order to connect to an IXC through Verizon's access tandem. Rather than deploy its own facilities or use those of another carrier, WorldCom seeks to purchase access toll connecting trunk services[29] from Verizon for the sole purpose of gaining access to IXCs to carry interexchange calls. There is no dispute that WorldCom seeks use of Verizon's facilities to carry interexchange access traffic and not local exchange traffic. Nonetheless, the Bureau required application of UNE rates.

WorldCom's proposal and the Bureau's resolution of this issue run afoul of § 251(g) of the Act, which exempts "exchange access . . . and exchange services for such access to interexchange carriers"[30] from the requirements of § 251. The legislative history of § 251(g) makes clear that "the obligations and procedures prescribed in [§ 251] do not apply to interconnection arrangements between local exchange carriers and telecommunication carriers under section 201 of the 1934 Act for the purposes of providing interexchange service, and

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28 *See In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Supplemental Order Clarification*, 15 FCC Rcd 9587 ¶ 18 (2000). *("Supplemental Order Clarification")*; *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147 and *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in Docket No. 96-98, 14 FCC Rcd 20912 ¶¶ 31-34 (1999). *("Line Sharing Order")*.

29 WorldCom labeled this service as "Meet Point Trunking Arrangements," while Verizon refers to the trunks that provide access to interexchange carriers as "access toll connecting trunks."

30 47 U.S.C. § 251(g).

nothing in [§ 251] is intended to affect the FCC's access charge rules."[31] The service at issue is just such an access service, as the Bureau itself recognized, calling the service "provision of switched exchange access services to IXCs."[32]

The Bureau misunderstands the parties' relationships when it states that "Verizon should assess any charges for its access services upon the relevant IXC, not WorldCom."[33] If WorldCom used its own facility to interconnect with the IXC, it would recover the cost of that facility in the access charge it assesses on the IXC. The same should be true when it chooses to use Verizon's exchange access service. That is, WorldCom should pay Verizon for the interexchange service Verizon provides ***to WorldCom*** and WorldCom should recover its costs when it assesses an access charge on the IXC.

The Bureau's decision impermissibly converts an access service to a UNE solely for the purpose of conferring a discount on a service that WorldCom is otherwise able to offer without UNEs.[34] By requiring Verizon to provide this access service at a UNE dedicated transport rate, the Bureau ensures that WorldCom has no incentive to utilize competitive alternatives from other access providers contrary to the pro-competitive goals of the Act. The Commission has recognized that UNE-based special access would "undercut the market position of many facilities-based competitive access providers."[35]

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31 S. Rep. No. 104-23, 104th Cong., 1st Sess. at 19 (1995).

32 *Order* ¶ 177.

33 *Id.*

34 *See AT&T v. Iowa Utilities Bd.* 119 S. Ct. 721, 735 (1999) ("the Commission's assumption that *any* increase in cost (or decrease in quality) imposed by denial of a network element renders access to that element 'necessary,' and causes the failure to provide that element to 'impair' the entrant's ability to furnish its desired services, is simply not in accord with the ordinary and fair meaning of those terms").

35 *See Supplemental Order Clarification* ¶¶ 14-15, 18.

Moreover, consistent with the Commission's decision in *Mountain Communications*, § 251(c)(1)'s obligations because these facilities are "not necessary for interconnection."[36] These facilities are not used to complete calls to or from Verizon's own customers. They are instead used for a transiting function in connection with toll calls between WorldCom's end users and IXCs. WorldCom could instead connect its switch directly with IXCs to exchange toll traffic. Therefore, the Commission's rules do not require Verizon to make these facilities available under § 251.

The same analysis discussed above compels reconsideration or clarification of the Bureau's resolution of Issues V-1 and V-8 with AT&T. In particular, the Bureau should clarify that AT&T does not have the option of using Verizon's access toll connecting trunks to access IXCs without paying Verizon for use of Verizon's access service.[37] AT&T proposed that "[n]either Party will charge the other Party for the facilities [Access Toll Connecting Trunks], including multiplexing and cross-connects."[38] In its discussion of this issue, the Bureau observed that "the parties indicate they have agreed on language that would govern meet point billing, and AT&T's proposed agreement contains language that appears very similar to Verizon's proposal in this regard."[39] The AT&T language in question, however, does not concern meet point billing. Rather, it describes the ***access*** interconnection architecture the parties use for interexchange

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[36] *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, File No. EB-00-MD-017, 2002 WL 1677642, ¶ 6 (rel. July 25, 2002) ("*Mountain Communications*), *aff'g, Mountain Communications, Inc. v. Qwest Communications International, Inc.*, File No. EB-00-MD-017, Mem. Op. and Order, 17 FCC Rcd 2091 (2002).

[37] *See Order* ¶ 209 & n.697. The Bureau adopted this AT&T language even though it rejected AT&T's proposed language for its Competitive Access Service. *See id.* ¶ 208.

[38] AT&T proposed interconnection agreement § 6.2.1.

[39] *Order* ¶ 209.

traffic.[40] If AT&T orders facilities from Verizon strictly to route traffic to or from an IXC, Verizon should be compensated for that service at access rates. AT&T should not be permitted to receive this facility for free.

II. INTERCARRIER COMPENSATION

A. ISSUE I-6: TOLL RATING AND VIRTUAL FOREIGN EXCHANGES.

The Bureau concluded that, when a Verizon customer places an interexchange call to one of the Petitioners' customers, and Verizon carries that call to a distant calling area before handing it off to the Petitioner for delivery, Verizon must pay reciprocal compensation on that call. It based that conclusion on the view that "rating calls by their geographical starting and ending points raises billing and technical issues that have no concrete, workable solutions at this time." *Order* ¶ *301*. The Bureau should both clarify and reconsider this aspect of its decision.

1. The Bureau Should Clarify That It Did Not Intend To Overrule Other Commission Orders.

As an initial matter, the Bureau should clarify its *Order* in two important respects to confirm that it did not (indeed, could not) *sub silentio* overrule other binding orders by the full Commission.

First, the Bureau should confirm that this aspect of its *Order* does not apply, as it cannot under existing rules, to ISP-bound traffic. On the contrary, the Commission repeatedly has held that ISP-bound traffic, which does not terminate on the Petitioners' networks but continues on to distant locations across the country and around the world, does not fall within the scope of the reciprocal compensation obligation under the Act or the Commission's rules. Indeed, the

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[40] *See* AT&T proposed interconnection agreement § 6.2; Verizon proposed interconnection agreement § 6.2.

Bureau's *Order* itself elsewhere recognizes that ISP-bound traffic is not subject to reciprocal compensation. *Order* ¶ 245. That same conclusion necessarily applies in this context as well, and the Bureau should confirm that is the case.

Second, the Bureau also should confirm that its *Order* does not contradict the decision of the Enforcement Bureau in the *Mountain Order*, subsequently affirmed by the full Commission's unanimous decision in *Mountain Communications*. There, the Commission expressly held that, under circumstances that parallel those at issue here, an incumbent LEC is entitled to charge for transport facilities that it provides to deliver traffic to a distant calling area in connection with an interconnecting carrier's wide area calling service.

Specifically, the interconnecting carrier in that case (Mountain) provided a wide area calling service by assigning Direct Inward Dialing ("DID") numbers to customers in a number of originating local calling areas; it then used dedicated transport facilities provided by the incumbent (Qwest) to connect those DID numbers to its interconnection point in a different local calling area. *Mountain Communications* at ¶ 5. Calls made to distant calling areas through that wide area calling service, of course, ordinarily would be toll calls for the incumbent's customers.[41] As the Commission recognized, however, the interconnecting carrier's wide area calling arrangement "ensures that calls to the DID numbers in each of the relevant Qwest central offices appear local and involve no toll charges to callers in those areas." *Id.* at ¶ 5. "By configuring its interconnection arrangement in this manner, Mountain prevents Qwest from

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[41] The Commission previously held that incumbent LECs are entitled to collect toll charges from their customers where they hand off calls outside the originating local calling area to an interconnecting carrier for delivery outside the originating local calling area. *See, e.g., TSR Wireless, LLC v U S West Communications, Inc.*, Mem. Op. and Order, 15 FCC Rcd 11166, 11177 (2000), *aff'd sub nom, Qwest Corp v. FCC*, 252 F. 3d 462 (D.C. Cir 2001).

charging its customers for what would ordinarily be toll calls to Mountain's network." *Id.* Accordingly, the Commission concluded that the incumbent was providing a "dedicated toll service," and that "Mountain has obtained a wide area calling service for which it must compensate Qwest." *Id.*[42]

That of course is precisely the service arrangement that is at issue here. As in that case, the so-called Virtual FX service assigns numbers -- by conscious design -- to make calls by Verizon's customers "appear local and involve no toll charges," and uses (typically dedicated) transport facilities provided by Verizon to connect those customers to Petitioners' interconnection point in a different calling area. And, as in that case, "configuring the interconnection arrangement in this manner prevents [Verizon] from charging its customers for what would ordinarily be toll calls to [Petitioners'] network[s]." Accordingly, again as in that case, Verizon provides a "dedicated toll service," and Petitioners "ha[ve] obtained a wide area calling service for which [they] must compensate [Verizon]."

Significantly, this conclusion applies regardless of how the Bureau ultimately resolves the underlying issue (addressed below) of whether Virtual FX traffic should be subject to reciprocal compensation at all. Indeed, in *Mountain Communications*, the traffic at issue was bound for customers of an interconnecting CMRS provider. As such, that traffic unquestionably

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[42] Nor was it an answer, the Commission expressly held, to claim that the dedicated transport facilities provided by the incumbent were necessary to effectuate a single point of interconnection within a LATA. *Mountain Communications* at ¶ 4, 6. Indeed, as noted above, while the Commission's rules permit an interconnecting carrier to obtain interconnection at a single point on the incumbent's network in the LATA, *see supra* pp. 2, they do not require an incumbent to provide dedicated toll facilities to support a wide area calling arrangement such as the one at issue in that case (and this one). Accordingly, the Commission held that "Mountain's wide area calling arrangement with Qwest is not necessary to effectuate interconnection." *Mountain Communications* at ? 6. On the contrary, "Mountain is free to

is subject to a reciprocal compensation obligation when it is handed off to a CMRS provider for delivery anywhere in the same MTA. Here, of course, the vast majority of the traffic at issue is ISP-bound traffic that unquestionably is *not* subject to a reciprocal compensation obligation. And, as explained below, the remaining (non-ISP-bound) traffic similarly is not subject to a reciprocal compensation obligation under the Commission's existing rules. Nonetheless, regardless of how this latter issue is resolved, the Commission's decision makes clear that Verizon is entitled to compensation for the dedicated toll service it provides.

2. The Bureau's Decision That Virtual FX Traffic Is Subject To Reciprocal Compensation is Contrary To The Commission's Rules.

The Bureau also should reconsider its underlying decision to the extent it requires Verizon to pay reciprocal compensation on calls that Verizon hands off to Petitioners outside the originating local calling area and that they deliver to customers outside the originating local calling area. Requiring the payment of reciprocal compensation on these calls directly conflicts with the Commission's existing rules.

Specifically, under these circumstances, the Virtual FX calls at issue are interexchange or "toll" calls just like the calls at issue in *Mountain Communications.* Just as in that case, the CLEC's serving arrangement and the assignment of virtual FX numbers "prevents [Verizon] from charging its customers **for what would ordinarily be toll calls**." *Mountain Communications* at ¶ 5 (emphasis added). Under these circumstances, the Commission has made clear that it is the interconnecting carrier who is receiving the toll (or interexchange) service. And because these calls are interexchange calls, (and have long been subject to their own

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cancel both the DID numbers and the dedicated toll facilities connecting those DID numbers to Mountain's single point of interconnection." *Id.*

separate compensation regime), they are exempt from reciprocal compensation. Under the Commission's rules, which reflect the requirements of § 251(g) of the Act, reciprocal compensation does not apply to "interstate or intrastate exchange access, information access, or exchange services for such access." 47 C.F.R. § 51.710(b)(1). As the Commission itself recognized, each of these three exempted categories of service have in common the fact that they relate to "the provision of services in connection with interexchange services."[43] The Commission's discussion of this exemption, shows that it was intended to encompass "calls that travel to points -- both interstate and intrastate -- beyond the local exchange.[44] Accordingly, requiring payment of reciprocal compensation on the calls is directly contrary to the Commission's rules.[45]

The Bureau should also prevent the Petitioners from receiving reciprocal compensation for virtual FX calls because it is inconsistent with the policies underlying the Commission's rules. In the *ISP Intercarrier Compensation Order*, for example, the Commission ended the requirement to pay reciprocal compensation for ISP calls because it "created opportunities for regulatory arbitrage and distorted the economic incentives related to competitive entry into the local exchange and exchange access markets." *ISP Intercarrier Compensation Order* at ¶ 2. The

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[43] For example, the Commission has explained that the term "exchange services" includes "the provision of services in connection with *interexchange* communications." and "is closely related to the provision of exchange access and information access." *ISP Intercarrier Compensation Order*, ¶ 37, n.65.

44 The Commission has explained that the term "exchange services" includes "the provision of services in connection with *interexchange* communications," and "is closely related to the provision of exchange access and information access." *ISP Remand Order* ¶ 37, n. 65.

[45] For the same reason, the Bureau should also make clear that intercarrier compensation does not apply to ISP-bound traffic that is virtual FX traffic. Thus, if an ISP's modem bank (or other applicable equipment) is not located in the same local calling area as the local calling area in which the call originated, then not only is payment of reciprocal compensation not required, but neither is payment of intercarrier compensation.

Commission also recognized that "such market distortions relate not only to ISP-bound traffic, but may result from any intercarrier compensation regime that allows a service provider to recover some of its costs from other carriers rather than from its end-users." *Id.* That is precisely what Petitioners are attempting to do by insisting that they are entitled to reciprocal compensation for virtual FX calls.

As the Commission observed:

> given the opportunity, carriers always will prefer to recover their costs from other carriers rather than their own end-users in order to gain competitive advantage. Thus carriers have every incentive to compete, not on basis of quality and efficiency, but on the basis of their ability to shift costs to other carriers, a troubling distortion that prevents market forces from distributing limited investment resources to their most efficient uses.

Virtual FX service operates in exactly that fashion. Carriers assign telephone numbers to their customers in distance calling areas that are associated with originating exchanges in which they have no customers or facilities, and seek to have Verizon pay to provide the interexchange portion of the service from the originating calling area to the distant calling area for free. Permitting that practice does not encourage true competition, but impedes it. The Bureau should therefore not let that practice continue because it is contrary to the Commission's public policy goals.

The Bureau's conclusion that the originating and terminating NPA-NXX codes should be used to determine whether reciprocal compensation applies also conflicts with other previous Commission orders. In fact, for purposes of intercarrier compensation, the Commission itself has specifically considered and rejected use of assigned NPA-NXX in place of actual geographic

end points of a call. In *AT&T Corp. v. Bell Atlantic-Pennsylvania,*[46] the Commission considered the intercarrier compensation associated with AT&T's offering of an interLATA FX service, described by the Commission as one "which connects a subscriber ordinarily served by a local (or 'home') end office to a distant (or 'foreign') end office through a dedicated line from the subscriber's premises to the home end office, and then to the distant end office."[47] An airline with a reservation office in Atlanta could provide customers in Richmond a locally rated number, but all calls would still be routed to Atlanta. The Commission ruled, in that situation, that AT&T was required to pay access charges for the Richmond end of that call – even though the call was locally rated for the caller, because AT&T was still using access service to complete an interLATA call to the called party. The fact that the calling party and the called party were assigned NPA-NXX's in the same local calling area was totally irrelevant to the proper treatment of the call for intercarrier compensation purposes.

The Bureau's ruling on this issue did not discuss these controlling Commission precedents; nor did it discuss the many state decisions holding that reciprocal compensation does not apply under these circumstances;[48] nor did it discuss the potential for regulatory arbitrage that its decision introduced. Instead, the Bureau based its conclusion on practical concerns about the ability to rate calls according to their actual geographic end points. Those concerns were misplaced, however.

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46 *AT&T Corp. v. Bell Atlantic-Pennsylvania*, 14 FCC Rcd 556, 587, ¶ 71 (1998) ("*AT&T v. BA-PA*"), *reconsideration denied*, 15 FCC Rcd 7467 (2000).

47 *Id.*

48 *See* state commission decisions in Ohio, Florida, Connecticut, Illinois, Texas, South Carolina, Tennessee, Georgia, and Missouri as cited in Verizon's Post-Hearing Brief at IC-19 through IC-21.

As an initial matter, the Bureau's conclusion that there is no practical way to rate calls based on anything other than the originating and terminating NPA-NXX is factually incorrect. As Verizon previously suggested, one such alternative is to conduct a traffic study to develop a factor to apply to Virtual FX traffic. In fact, since the hearing in this case, Verizon has implemented just such an approach in another state to identify and quantify CLEC originated traffic destined to a Verizon FX number. As explained in the accompanying declaration, Verizon could readily import this same method to Virginia.[49] As Verizon suggested at the hearing and in brief, it would be a relatively inexpensive and straightforward matter to do a traffic study, based on an analysis of known Virtual FX numbers, to determine the percentage of calls that terminate outside their originating calling areas. Verizon has used such a study to distinguish its own FX traffic from traffic subject to reciprocal compensation. If Verizon can perform such a study, then a CLEC should be able to do so as well with its limited number of Virtual FX customers in Virginia.[50]

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[49] Pursuant to 47 C.F.R. § 1.106, Verizon is filing the attached declaration of William Munsell to supplement the record. The Bureau should accept this additional testimony because it is information developed after the hearing and it is in the public interest.

[50] Contract language, for each of the petitioners' agreements, to give effect to using a traffic study or other appropriate means to distinguish Virtual FX calls would be straightforward: "Notwithstanding any other provision of this Agreement, each Party agrees to determine the originating and terminating points of the complete end-to-end communication using a reasonable, periodic traffic study or other documented means." This sentence would apply together with the following provisions intended to give effect to the points Verizon makes in this Virtual FX section of the Petition: "Section 251(b)(5) traffic is traffic originated by ~~one Party and directed to the NPA-NXX-XXXX of a LERG-registered end office of the other Party~~ a customer of one Party on that Party's network and terminates to a customer of the other Party on that other Party's network, within a Local Calling Area and any extended service area, as defined by the Commission, as determined by the originating and terminating points of the complete end-to-end communication. Section 251(b)(5) traffic does not include traffic to Internet Service Providers. Notwithstanding any other provision of this Agreement, each Party agrees to reasonably exclude from its reciprocal compensation billing and intercarrier compensation billing (i.e., for ISP-bound traffic) to the other Party, any traffic that, based on the calling and called NPA/NXX codes, appears to be traffic subject either to reciprocal compensation or intercarrier compensation, but due to the called number being

Moreover, use of a traffic study to develop a factor in this context is little different from use of such studies in any number of other contexts. For example, carriers have long relied on traffic studies to determine factors for the relative use of network facilities that carry both interstate and intrastate traffic (known as "percent interstate use" or "PIU" factors). They also have relied on traffic studies to determine factors for the relative percentage of local and access traffic in their interconnection arrangements (known as "percent local use" or "PLU" factors). And here, the Bureau itself expressly endorsed the development of factors for use in applying the 3:1 ratio established by the *ISP Intercarrier Compensation Order*, and to exclude exchange access and toll traffic that is not subject to reciprocal compensation. *Order* ¶¶ 266, 269, 274. There is no reason the parties cannot develop similar factors to apply to Virtual FX traffic as well.

Accordingly, the Bureau should reconsider its *Order* and direct the parties to develop an appropriate factor to exclude from reciprocal compensation payments any traffic that Verizon hands off to Petitioners' outside the originating local calling areas and that they deliver to customers outside the originating local area.

B. ISSUE III-5: TANDEM SWITCHING RATE.

The Bureau's *Order* also is inconsistent with Commission precedent in holding that Petitioners need not show that their switches actually serve areas geographically comparable to the areas served by the Verizon tandem switches before being entitled to reciprocal compensation

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assigned to a customer or ISP that is physically located outside of the called number's rate center, is not reciprocal compensation traffic or intercarrier compensation traffic (e.g., where an ISP modem bank or other applicable equipment is physically located outside of the rate center associated with the ISP's telephone number)."

at the higher tandem rate. The Bureau's *Order* has the effect of giving the Petitioners an uneconomic windfall, in that they will be able to charge Verizon the higher tandem rate for all traffic terminated, regardless of the costs the Petitioners incur.

1. The Commission's Geographic Comparability Test Requires The CLEC To Demonstrate That Its Switches Actually Serve A Geographic Area Comparable To That Served By The ILEC's Tandem.

In the *Local Competition Order*, the Commission concluded that, "it is reasonable to adopt the incumbent LEC's transport and termination prices as a presumptive proxy for other telecommunications carriers' additional costs of transport and termination."[51] The Commission further found that, since "additional costs" would likely be greater when tandem switching is involved, it would be appropriate to create separate rates for tandem and end office switching.[52] Finally, acknowledging that new technologies might perform functions similar to those performed by an ILEC tandem, the Commission ruled that: "Where the interconnecting carrier's switch ***serves*** a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's ***additional costs*** is the LEC tandem interconnection rate."[53] The Commission recently confirmed that the actual reach of the CLEC switch must be demonstrated, not just assumed: "We confirm that a carrier ***demonstrating that its switch serves*** 'a geographic area comparable to that served by the incumbent LEC's tandem

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51 *Local Competition Order* ¶ 1085.

52 *Id.* at ¶ 1090.

53 *Id.* (emphasis added).

switch' is entitled to the tandem interconnection rate to terminate local telecommunications traffic on its network."[54]

The Commission could have said that a carrier demonstrating that its switches ***are capable of serving*** a comparable geographic area is entitled to reciprocal compensation at the tandem rate. It did not say that, nor would it have made any sense. Any switch is ***capable*** of serving a very large area; it is the loop/transport facility to end users that determines geographic reach, not the switch itself. Demonstrating that a switch is **capable** of serving an area comparable to that served by a tandem switch, therefore, is no demonstration at all. Instead, the demonstration should include, at a minimum, evidence showing that a CLEC has customers and facilities (either its own or leased from other carriers, including Verizon) in exchanges that are comparable in size to the area served by Verizon's tandem switch. The Bureau's interpretation, however, would render the distinction the Commission made between end office and tandem rates for CLECs meaningless, and it therefore cannot be right. As a number of state commissions have found, the proper way to interpret this rule is that it requires a CLEC to demonstrate that its switches ***actually serve*** a geographic area comparable to the ILEC tandem.[55] The Bureau should reconsider and apply the Commission's clear precedent to the agreements at hand.

III. UNBUNDLED NETWORK ELEMENTS

A. ISSUE III-10: LINE SHARING AND LINE SPLITTING.

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54 *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC No. 01-132, Notice of Proposed Rulemaking ¶ 105 (rel. April 27, 2001). (*"Intercarrier Compensation NPRM")* (emphasis added).

55 *See Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996*, Arbitration Award, Texas Public Utilities Commission, Docket No. 21982 (rel. July 13, 2000) at 28-29. *("Texas Recip. Comp. Order")*; *MCI Telecommunications Corp. v. Michigan Bell Telephone Co.*, 79 F. Supp. 2d 768, 790-92 (E.D. Mich. 1999); *FL (AT&T and BellSouth) Arbitration Order* at 79-80.